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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH KESSLER RYAN,

Defendant and Appellant.

2d Crim. No. B294099
(Super. Ct. No. 18CR06137)
(Santa Barbara County)

Joseph Kessler Ryan pled no contest to assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). The trial court denied Ryan's motion to withdraw his plea, and placed him on five years of formal probation. It ordered him to pay a \$130 booking fee (Gov. Code, § 29550.2),¹ a \$600 restitution fine (Pen.

¹ The trial court did not reference the statutory authority for the booking fee it imposed. In their briefs, the parties assume that the court imposed the fee pursuant to Government Code section 29550.2. We accept that fact-specific determination for purposes of this opinion. (See *People v. McCullough* (2013) 56 Cal.4th 589, 592 (*McCullough*).)

Code, § 1202.4, subd. (b)), a \$40 court operations assessment (Pen. Code, § 1465.8), and a \$30 court facilities assessment (Gov. Code, § 70373).

After sentencing, the trial court granted Ryan's request for a certificate of probable cause. (Pen. Code, § 1237.5, subd. (b).) He contends the court erred when it: (1) denied his motion to withdraw his plea, and (2) imposed the booking fee, restitution fine, and court assessments without determining that he had the ability to pay. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Santa Maria police officers responded to a report that J.C. had been robbed and beaten. J.C. told police that he saw Ryan's car in a parking lot. Because Ryan owed him money, J.C. walked up to the car and demanded his money. Ryan got out of the car holding a steak knife. He told J.C. to "get the fuck out of [t]here" and threatened to kill him. He then lunged at J.C. Ryan followed J.C. as he walked away, and struck him in the head and forearm with a large rock.

The prosecution charged Ryan with assault and criminal threats (Pen. Code, § 422). Ryan pled no contest to the assault charge and agreed to serve five years of probation. In exchange, the prosecution agreed to dismiss the criminal threats charge. The fees, fines, and assessments to be imposed, if any, were to be determined by the trial court at sentencing.

The postplea probation report showed that Ryan had been unemployed since 2005. He earned money by recycling cans and refurbishing pallets. His monthly income was under \$950, and exceeded his monthly expenses by less than \$90. The probation officer told Ryan of his right to a hearing to determine his ability to pay any booking fee that might be imposed.

Ryan subsequently moved to withdraw his plea. In the declaration attached to his motion, Ryan claimed he “accepted the prosecution’s plea deal in order to get out of jail.” He moved to withdraw his plea because he was “factually innocent of the charged offenses.”

Ryan also claimed to suffer from “a medical condition that prevented him from fully understanding and waiving his constitutional rights” when he pled. In support of that claim, Ryan attached medical records from a neurologist, Dr. Peter Masny. Ryan visited Dr. Masny about one week before the incident with J.C. During the visit Ryan complained of headaches, difficulty sleeping, confusion, and nausea.

At the hearing on his motion, Ryan told the trial court that he regretted admitting to an assault he did not commit. He “wasn’t thinking straight” when he was arrested, and for a few days he did not know why he was incarcerated. He was treated for dizziness three times while in jail.

The trial court told Ryan that none of the information he provided showed an inability to understand the consequences of his plea. If he had information showing that, he needed to present it. The court granted Ryan a continuance to gather the information.

Ryan was unable to provide the information the trial court requested. Dr. Masny could only confirm that he had been treating Ryan for headaches. The court reviewed Ryan’s medical information, and determined that none of it “sa[id] anything about [his] state of mind at the time [he] entered his plea.” It denied his motion to withdraw.

The trial court placed Ryan on five years of formal probation. It ordered him to pay a booking fee, restitution fine,

court operations assessment, and court facilities assessment. The court said that it considered Ryan's ability to pay when it calculated the booking fee. It did not mention his ability to pay when it imposed the restitution fine or either of the assessments.

DISCUSSION

Motion to withdraw plea

Ryan contends the trial court erred when it denied his motion to withdraw his no contest plea. We disagree.

No contest pleas "should not be set aside lightly." (*People v. Weaver* (2004) 118 Cal.App.4th 131, 146.) A trial court may nevertheless permit a defendant to withdraw a plea upon a showing of good cause. (Pen. Code, § 1018.) To establish good cause, "the defendant must show by clear and convincing evidence that [they were] operating under mistake, ignorance, or any other factor overcoming the exercise of . . . free judgment, including inadvertence, fraud, or duress." (*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1416.)

A trial court has broad discretion to deny a defendant's motion to withdraw a no contest plea. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.) In exercising that discretion, the court "must resolve conflicting factual questions and draw the resulting inferences." (*People v. Quesada* (1991) 230 Cal.App.3d 525, 533.) We will not disturb the court's resolution of those questions if supported by substantial evidence. (*Fairbank*, at p. 1254.)

There was no abuse of discretion here. The trial court considered Ryan's motion to withdraw his plea, his statements at the hearings on the motion, and the medical information Dr. Masny provided, and concluded that it did not show that Ryan did not understand the consequences of his plea.

Substantial evidence supports that conclusion. The information provided showed that Ryan had headaches and confusion in the days leading up to his arrest and while in jail. But it showed nothing about Ryan's mental state at the time he pled. (*People v. Cruz* (1974) 12 Cal.3d 562, 566-567 [motion to withdraw plea properly denied where defendant did not show confusion when he entered plea].) Moreover, though Dr. Masny said that Ryan's headaches occasionally caused confusion, he also said that Ryan's cognition level was normal. (*People v. Wharton* (1991) 53 Cal.3d 522, 585 [motion to withdraw plea properly denied where conflicting medical information presented].)

Additionally, Ryan admitted in his declaration that he pled so he could get out of jail. Buyer's remorse is not good cause for withdrawal of a no contest plea. (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.) The trial court did not abuse its discretion when it denied Ryan's motion. (*Ibid.*)

Booking fee, restitution fine, and court assessments

Ryan contends the trial court erred when it ordered him to pay a booking fee, restitution fine, court operations assessment, and court facilities assessment without considering his ability to pay. (*People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1164 (*Dueñas*).) The Attorney General argues Ryan forfeited his contentions because he did not object to the fee, fine, and assessments at sentencing. (*McCullough, supra*, 56 Cal.4th at p. 591 [booking fee]; *People v. Avila* (2009) 46 Cal.4th 680, 729 (*Avila*) [restitution fine]; *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1154-1155 [court assessments].) We agree with each party in part.

Government Code section 29550.2, subdivision (a), requires a trial court to consider a defendant's ability to pay

when it imposes a booking fee. The court here did so. Ryan thus had the opportunity to challenge the fee at sentencing, as the probation officer indicated. (*McCullough, supra*, 56 Cal.4th at pp. 592-593.) Because he did not, he cannot raise his challenge for the first time on appeal.² (*Id.* at p. 597.)

The same is true with respect to the restitution fine. Whenever a trial court increases a restitution fine above the \$300 statutory minimum, it may consider the defendant's ability to pay. (Pen. Code, § 1202.4, subd. (c).) The court here set Ryan's fine at double the minimum. That provided him with the opportunity to bring to the court's attention any factors relevant to his ability to pay. (*Avila, supra*, 46 Cal.4th at p. 729.) Again, he did not do so. He accordingly forfeited his challenge to the restitution fine. (*Ibid.*)

We reach a different conclusion regarding the court operations and court facilities assessments. When the trial court sentenced Ryan, imposition of these assessments was mandatory. (*Dueñas, supra*, 30 Cal.App.5th at p. 1163.) Any objection to them would have been futile. (*People v. Castellano* (2019) 33 Cal.App.5th 485, 489; see also *People v. Johnson* (2019) 35 Cal.App.5th 134, 138 [agreeing with *Castellano*].) There was no forfeiture. (*Castellano*, at p. 489.)

² The probation report indicates that the Santa Maria Police Department, a city agency, arrested Ryan. If so, the booking fee would have been imposed pursuant to Government Code section 29550.1. Unlike section 29550.2, section 29550.1 does not expressly authorize a trial court to consider a defendant's ability to pay when it imposes a booking fee. The court below did so anyway, giving Ryan the opportunity to contest the fee at sentencing. Because he had that opportunity, he forfeited his challenge.

But remand is unnecessary. When the trial court found that Ryan had the ability to pay a \$130 booking fee, it considered his 13-year-long unemployment history, his lack of assets, and his minimal disposable income. It was undoubtedly aware of these factors when it set his restitution fine at twice the statutory minimum. (See Pen. Code, § 1202.4, subd. (b)(1) [restitution fine may range from \$300 to \$10,000].) It strains credulity to believe that the court would now strike \$70 in formerly mandatory court assessments when it previously determined that Ryan had the ability to pay \$430 more than the combined amount of the minimum restitution fine and two assessments.

Moreover, Ryan did not object to a booking fee and restitution fine totaling \$730 based on an inability to pay. “[H]e surely would not complain on similar grounds regarding an additional [\$70] in [assessments].” (*People v. Gutierrez* (2019) 35 Cal.App.5th 1027, 1033.) Remand would be an idle act.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

James K. Voysey, Judge

Superior Court County of Santa Barbara

Heather Shallenberger, under appointment by the
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